IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 21726 of 2006(J)

PETITIONER:

DR. UNNIKRISHNAN NAMBOODHIRI,
AGED 50 YEARS, S/O.S.NARAYANAN NAMBOODHIRI,
MEDICAL OFFICER (SPECIALIST), TALUK AYURVEDA
HOSPITAL, NORTH PARAVUR, ERNAKULAM DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY, HEALTH &
FAMILY WELFARE (D) DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. DIRECTOR,
INDIAN SYSTEMS OF MEDICINE, TRIVANDRUM.

3. CONVENOR,
D.P.C. (HIGHER), INDIAN SYSTEMS OF MEDICINE,
TRIVANDRUM.

4. DR. O.ANIHA,
SPECIALIST MEDICAL OFFICER (MARMA),
DISTRICT AYURVEDA HOSPITAL, VARKALA,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 21726/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PROCEEDINGS NO. D1/18793/04 DT. 4/1/05 OF THE R2 PROMOTING C SARADA AS SR. MEDICAL OFFICER (SPECIALIST).

EXT.P2. COPY OF THE PROCEEDINGS NO. D3/5985/04 DATED 13/08/2004 OF THE R2 PUBLISHING FINAL GRADATION LIST OF MEDICAL OFFICERS (SPECIALISTS) AS ON 1/1/2004.

EXT.P3. COPY OF THE REPRESENTATION DT. 09/06/05 BY PETITIONER TO THE R1.

EXT.P4. COPY OF THE REPRESENTATION DT. 29/06/06 BY PETITIONER TO THE R1.

EXT.P5. COPY OF THE COVERING LETTER OF R1, NO. 22638/D2/2006/H7 FWD DT. 4/7/06 ADDRESSED TO THE DIRECTOR OF PRINTING, TRIVANDRUM TO PUBLISH EXHIBIT P5A SELECT LIST IN GAZETTEE.

EXT.P5A. COPY OF THE GO P NO. 118/06/H&FWD SELECT LIST, DT. 3/07/06 BY R1 TO THE DIRECTOR OF PRINTING, TRIVANDRUM TO PUBLISHED IN GAZETTEE.

RESPONDENT'S EXHIBITS **NIL.**

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V.GIRI, J.

W.P.(C) No.21726 of 2006 J

Dated this the 7th day of November, 2007.

JUDGMENT

Petitioner, who is working as a Medical Officer (Specialist Visha) in the Department of Indian Systems of Medicines, Government of Kerala, is aggrieved by the fact that he was not considered for promotion to the post of Senior Medical Officer (Specialist). The Special Rules for the Kerala Health Services (Indian Systems of Medicine) 1981 originally provided that the qualifications prescribed to the post of Senior Medical Officer is M.D.Ayurveda or a degree or diploma in Ayurveda of a recognized University. A select list was published on 6.7.2004. Two Senior Medical Officers (Specialists) were promoted as Chief Medical Officers by Government Order dated 23.8.2004 and accordingly two vacancies in the post of Senior Medical Officer (Specialist) occurred. But, it so happened that there was only one candidate available in the

select list dated 6.7.2004 viz., one Dr.Sarada and as per Ext.P1 order, she was promoted to the post of Senior Medical Officer. Petitioner was not considered for promotion at that point of time because he was not included in the select list dated 6.7.2004. The Special Rules were amended with effect from 5.4.2005. Thereafter, a degree became mandatory for promotion to the post of Senior Medical Officer (Specialist). Petitioner possessed only a diploma and therefore, petitioner was ineligible to be promoted to the post of Senior Medical Officer (Specialist). Thus, the petitioner was not considered by the Departmental Promotion Committee which was subsequently convened. Petitioner filed a representation before the Government and the Director, seeking promotion against a vacancy, which according to him, was existing from the date of Ext.P1 on the premise that the petitioner became inadequately

qualified only on account of the amendment of the Special Rules.

2. A counter affidavit has been filed by the Government pointing out that the petitioner was not included in the list dated 6.7.04; that though there were two posts on the date of Ext.P1, there was only one person in the select list viz., Dr.Sarada. By the time the Departmental Promotion Committee was convened in 2005, Special Rules were amended and the petitioner was not considered because he was not qualified in terms of the Amended Rules.

3. After hearing the counsel on both sides, I am of the view that the petitioner was obviously not entitled to get a direction to be considered for promotion to the post Senior Medical Officer against a vacancy which was existing on date of Ext.P1 merely because the petitioner was then qualified. Obviously, the post in question is a selection post and unless the petitioner was included in the select list,

he could not have been promoted. Dr.Sarada was the last person to be included in the list dated 6.7.04. Therefore, she was promoted as per Ext.P1. Unfortunately for the petitioner, by the time the Departmental Promotion Committee was convened and had published a select list, the Special Rules had been amended and the petitioner did not possess the revised qualification.

In the circumstances, I find no merit in this writ petition and the same is, therefore, dismissed.

Sd/-
(V.GIRI)
JUDGE

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P.S. To Judge